



BERGESON & CAMPBELL, P.C.

1203 Nineteenth Street, NW | Suite 300 | Washington, DC | 20036-2401 | tel 202.557.3800 | fax 202.557.3836 | web www.lawbc.com

MEMORANDUM

Via E-Mail

DATE: June 18, 2008

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: Canada Issues Final PFOS Regulations

The June 11, 2008, *Canada Gazette* includes a final rule entitled “Perfluorooctane Sulfonate and its Salts and Certain Other Compounds Regulations.” The regulations prohibit the manufacture, use, sale, offer for sale, and import of perfluorooctane sulfonate, its salts, and certain other compounds (PFOS), as well as products containing PFOS, other than a limited number of exemptions. Environment Canada intends the regulations to prevent the risks posed to Canada’s environment from the use and release of PFOS by those who either use the substance or use certain products containing the substance. The regulations were effective upon publication. The *Canada Gazette* notice is available on the Internet at <http://canadagazette.gc.ca/partII/2008/20080611/html/sor178-e.html>.

According to the notice, information collected in support of the regulations indicates that, since 2002, imports into Canada of PFOS as raw chemicals and in products or formulations “have essentially ceased.” The notice states that this finding was confirmed by a use pattern survey published on January 15, 2005. The survey targeted possible manufacturers, exporters, and importers of PFOS in amounts exceeding 100 kilograms (kg) and in concentrations of greater than ten grams per kg (g/kg) for the 2004 calendar year. The survey results indicated that:

- There are no manufacturers or exporters of PFOS in Canada;
- Approximately three tonnes of PFOS were imported in 2004 for use as a surfactant in fume suppressants for the metal-plating sector; and
- With the exception of an estimated 300-tonne stockpile of aqueous film-forming foams (AFFF), representing approximately three tonnes of PFOS



®

BERGESON & CAMPBELL, P.C.

Memorandum to Firm Clients and Friends
June 18, 2008
Page 2

used for firefighting, it is very likely that most inventories of PFOS in all other sectors have been depleted.

Although the regulations prohibit the manufacture, use, sale, offer for sale, and import of PFOS or manufactured products containing these substances, the following exemptions for specific uses are allowed:

- The use of AFFFs manufactured or imported before the coming into force of the regulations, at any time, if the PFOS concentration is less than or equal to 0.5 parts per million (ppm);
- The use of PFOS-based AFFFs manufactured or imported before the coming into force of the regulations at any concentration for a period of five years after the coming into force of the regulations (but not for training or testing purposes);
- The use of PFOS-based AFFFs on military vessels that may be deployed within five years after the coming into force of the regulations;
- The use of PFOS-based AFFFs on military vessels and firefighting vehicles that are contaminated during foreign operations occurring after the coming into force of the regulations;
- The use of PFOS-based fume suppressants and sale, offer for sale, and import for that use, for a period of five years after the coming into force of the regulations for:
 - Chromium electroplating, chromium anodizing, and reverse etching;
 - Electroless nickel-polytetrafluoroethylene plating; and
 - Etching of plastic substrates prior to their metallization;
- The manufacture, use, sale, offer for sale and import of:
 - Photoresists or anti-reflective coatings for photolithography processes; and



®

BERGESON & CAMPBELL, P.C.

Memorandum to Firm Clients and Friends
June 18, 2008
Page 3

- Photographic films, papers and printing plates;
- The use, sale, offer for sale or import of aviation hydraulic fluid;
- The use, sale, and offer for sale of manufactured products that were manufactured or imported before the coming into force of the regulations; and
- Use in laboratories for scientific research and laboratory analytical standards.

The notice states that, since the regulations were promulgated under the Canadian Environmental Protection Act, 1999 (CEPA), enforcement officers will, when verifying compliance, apply the Compliance and Enforcement Policy implemented under CEPA. The Policy sets out the range of possible responses to violations, including: warnings; directions; environmental protection compliance orders; ticketing; ministerial orders; injunctions; prosecution; and alternative environmental protection measures. In addition, the Policy spells out when Environment Canada will resort to civil suits by the Crown for costs recovery.

* * * * *

We hope this information is helpful. As always, please call if you have any questions.